



November 29, 1999

Mr. James R. Satterwhite
Executive Director
Rural Capital Area Workforce
Development Board, Inc.
Post Office Box 5272
Round Rock, Texas 75653

OR99-3436

Dear Mr. Satterwhite:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 129783.

The Rural Capital Area Workforce Development Board, Inc. (the "board") received a request for "the successful proposal in the most recent procurement of CCMS services in the Rural Capital LWDA." In response to the request, you submit to this office for review the information which you assert is responsive. Although you represent that the board "does not" take a position on this matter, you explain that "Lockheed Martin IMS has expressed to us that all or part of the proposal should not be shared as public information."¹ Based on your representation, we understand that section 552.110 of the Government Code may be implicated in the pending request for information. We have considered the arguments which may be applicable and reviewed the submitted information.

On September 21, 1999, the board notified a representative of Lockheed Martin IMS ("Lockheed Martin") that an open records decision was received regarding its responsive proposal. Section 552.305 of the Government Code requires a governmental body to make a good faith attempt to notify a person whose proprietary interests may be affected by a request for information. Gov't Code § 552.305. In your letter to Lockheed Martin, you advise the company that they should provide the board with an explanation as to why their proposal is excepted from public disclosure, with the caveat that Lockheed Martin's failure to do so within a reasonable time would result in the presumption that Lockheed Martin "no longer maintains the position that the information is excepted from public disclosure."

This office is unable to determine whether the notification sent to Lockheed Martin is in compliance with section 552.305. Pursuant to section 552.305 the notice to the third-party must:

¹We note that information is not confidential under the Public Information Act simply because the party submitting it to a governmental body anticipates or requests that it be kept confidential. Open Records Decision No. 479 (1987).

(1) be in writing and sent within a reasonable time not later than the 10th business day after the date the governmental body receives the request for the information; and

(2) include:

(A) a copy of the written request for the information, if any, received by the governmental body; and

(B) a statement, in the form prescribed by the attorney general, that the person is entitled to submit in writing to the attorney general within a reasonable time not later than the 10th business day after the date the person receives the notice:

(i) each reason the person has as to why the information should be withheld; and

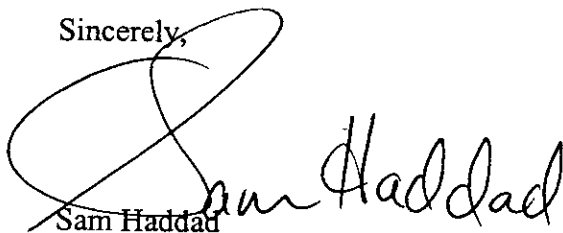
(ii) a letter, memorandum, or brief in support of that reason.

See Gov't Code § 552.352 (distribution of confidential information is criminal offense).

Lockheed Martin has not submitted to this office any reason to withhold the requested information. Consequently, we have no basis for concluding that the submitted proposal is excepted from public disclosure. *See Open Records Decision No. 552 (1990).* As neither the board nor the third party has cited to a statute or judicial decision that makes the information privileged or confidential, the board may not withhold the requested information under section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Haddad", is written over a horizontal line.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 129783

Encl: Submitted documents

cc: Ms. Jill Stovall
East Texas Employment and Training
2210 Frankston Hwy.
Tyler, Texas 75701
(w/o enclosures)